685 he bought the stolen property from a person unknown to him, he himself is considered a thief.

/163/ If the accused cannot indicate the source of the stolen goods or gives confused testimony, he is considered the thief.

685 If the victim of the theft, without having tracks or a witness,
694 casts suspicion on someone, stating that the suspicious person was around the village where it was committed on the day of the theft, or else that he was near the stolen objects, then information must be obtained as to where the person under suspicion spent the night, with whom he had the evening meal and whom he met on the day of the theft. If the persons interrogated testify that the person under suspicion did indeed spend the night and sup with them and was nowhere else on that day, or that when they met him he was innocent of theft, then he is cleared of the accusation without an oath.

If the victim of the theft puts a purely verbal suspicion of the theft on someone, it must be learned by questioning outside people, whether the person under suspicion was at home on the day of the theft or in another village. If it is shown that he was at home on that day or in another village, then he is cleared of the false accusation made against him. But if he cannot prove this or is unable to find the people with whom he was staying or those whom he met, in that case he must be considered the thief and be obligated to pay for the stolen property.

If suspicion is strengthened by the vague and evasive answers of the suspect, then he must swear for the quantity of the stolen property.

If a theft is made from someone and he, without being able to find the stolen property anywhere, presents an accusation of a certain person, saying that a guest of the accused made the theft, in such a case it must be learned when the guest departed, who saw him on the road, and where he stopped. If the accused host can show three stop-overs of his guest, he is cleared of the accusation. If a person who met the guest, or if his hosts for the stop-overs testify that he /164/ was innocent of theft, then the guest as well as his host are cleared of the accusation without oath. But if the host is unable to give answers to all the questions noted above, and then, when obliged to find that guest within a certain period of time, is unable to do so, then he must answer for it himself.

If the master of the house says that a guest stayed with him and was fed by him, but who it was and where he went is unknown to his host, and that he does not know the direction in which the

guest left in the morning, then the victim of the theft declares that he does not believe this, for the master of the house made the theft and sent the stolen goods away with the guest. If the master of the house then declares that he cannot find the guest, an oath is required from his side. 685 694

If during the investigations of the thief, evidences lead to a certain village or tent, their owners must show (izim shygaryb ber), on demand of the plaintiff, where these traces passed out of the village again. Otherwise the aksakals and the people are called as witnesses of the existence of fresh tracks which end in this village or tent, after which the relevant owners are held responsible before the court.

If someone suffers a theft and in following the tracks of the stolen property comes to a village, and the inhabitants declare that the theft was not committed by them and that they know nothing about the tracks, in case the tracks exist in the snow, an oath is required from the victim of the theft. But if there is no snow, the oath is required from the side of those who profess ignorance.

If the object in the suit was taken away not personally by the defendant but by a rider sent by him, and if the defendant disavows it, the rider is held responsible.

When a stolen head of livestock appears by itself accompanied by a loose animal, the decision is deferred, even for a year, to await information as to where the loose animal belongs. If this cannot be learned in the given length of time, then the person on whom suspicion fell earlier is held responsible. If he provides testimony about the stolen animal showing that it is homebred (koltuma), then his side is put to an oath before it is taken away from him. /Inserted page. Picture. Caption: Bii Mikebay of the Perovsk uyezd. Drawing by V. Olivetskii./ 1/

/165/ When the stolen animal is confiscated, agreements are often made of the sort that the plaintiff pays half its value to the person from whom it is confiscated, with the understanding that when the thief is found he will pay each of them the value of the animal. 685

If several animals are lost and only one is found with the thief, it is concluded from this that he also stole the others, but a special oath is decreed for them.

When the stolen livestock is being returned, the rule is observed that the animal returned should be of the same quality, sex, age, and in general of the same value as that stolen, otherwise the

1/ [Not reproduced -- A.]

685 thief should pay the owner the difference in money. In this last case, and also when all the stolen livestock is paid for in money, care is taken that the animal should not be underevaluated, for otherwise the owner demands the exaction of an additional payment (tolyktyk) from the bii.

685 694 An animal recognized at the bazaar is not confiscated. The person who has brought it there must present the man from whom he received it; otherwise, if he declares it to be his own property, they go to the bii (Abdrakhman, Auliye-Ata uyezd).

An animal which is recognized in the possession of an outside person, who did not steal it himself but bought it at the bazaar, is confiscated only if the person recognizing it proves by his personal oath, and the testimony of five (1) witnesses, and the oath of one

1. According to other information, seven witnesses.

witness that the recognized animal or other property actually belongs to him. The animal is not confiscated until the decision on the case. If a sheep is recognized in the possession of a man who bought it at a bazaar, neither testimony from witnesses nor a personal oath gives the owner the right to take it away, since the sale of sheep at a bazaar takes place without guarantors and there is no sidzhil' (2)

[695] 2. A copy of a decision of judges, kazis and other officials is called sidzhil'. According to this copy, a thing which is recognized by an outsider, who proves by the testimony of witnesses his right to it, is confiscated. A copy of such a judgment is given to the defendant, /166/ so that he can sue the person from whom he bought it for his losses. There is also a sidzhil' in civil suits for money. If an animal is confiscated by sidzhil' a karkara destroys the force of the sidzhil'.

The testimony of several persons, with their signature and seal, with the countersign of official persons is called a karkara. In this testimony it is explained that such and such an animal, with an exact description of it appended, constitutes the homebred property of such and such a person.

for them ordinarily. (Communicated by Yunusov).

685 /166/ Placing one's brand on a strange animal is considered to be stealing. According to Abdrakhman, this happens rarely. For

697 is imprisoned at night in a pit which is covered by a grating, and someone sleeps on top of the grating. He is not kept in the tent lest he kill someone, flee, cause a disturbance, and among other things, do wrong to someone. They put horse locks (ksen) on the legs of a thief from a nearby place, passing them through the sidepiece of the tent at night, and pemitting him to walk about in them during the day.

Among the Kirgiz, captured thieves are bound and then subjected to corporal punishment (dzharb kursetedi) until /vpred'do/ the affair is investigated by the bii. Without denying the injustice of puinishment before the judgment of the affair by the bii, Kunakbay (Auliye-Ata uyezd) justifies this custom for those cases where the thief is caught red-handed or was armed with a spear or an ax (aybalta).

If the thief is caught in the act of stealing and refuses to go to the nearest volost official, arguing that he is innocent, or if he attempts to flee, then he is bound. If the thief continues to deny his guilt after that, or to make various claims, he is beaten in order to force confession (chiningdy ayt). The volcst official to whom they take the prisoner asks him such questions as: "Are you a thief? Where did you steal from? (or come from). If you are not a thief, clear yourself and I will let you go free. But if you did steal, I will give you over to the owner of the stolen goods." The thief is transferred into the hands of the owner. The owner of the stolen goods keeps the thief in his tent until the presentation of his suit /168/ in court. The prisoner is kept bound or in general in such a way that he cannot escape (kitpes kylyb baylaydy) his legs are fettered (ksen salady), and also he is beaten, but not much (kub savamaydy). They do not beat or abuse a well-known person(bilimdy ksi). A bii does not accept complaints from the thief for blows, saying: "That is your punishment (dzhaza)". (Communicated by bii Abdurakhman, Auliye-Ata uyezd).

•694 If the thief is captured while stealing at night, his captor confines him in the tent and interrogates him: "Why are you stealing?
672 Was it not you who also stole what was lost last year and the years before?" Bound and confused, the thief often confesses, while being beaten, to all these crimes, of which he is completely innocent, and of which they accuse him only in order to frighten him. Later they inform the volost official of his confession and send him the thief himself. The volost official also holds the thief in confinement, interrogates him and notifies his relatives. The best people from among

694• 672

his relatives appear and say to the volost official: "Give up this thief to us. We will interrogate him well. If he is guilty of something we will make him pay for it. If he is innocent we will present you with proof" (bul uyyny bzning kolymyzga ber, muny abdan khub suralyk; algan bulsa, maldy alyb berelik, algan bulsa, almagan iken dib sizdi isenterelik). In agreeing to give up the prisoner, the volost official takes a receipt (tilinen khat) for the fulfillment of the promises mentioned above.

685

The owner who has already received his property can receive a supplementary atton from the thief. Sometimes the biis and aksakals among the relatives of the thief say: "He is innocent of other thefts (uzge maldan) take atton from him and give him a voucher for the fact that you will not open suit against him for anything lost" (falan vakytda dzhogalgan degen maldy suramaska), or else: "But if you are thinking of opening a suit, give us back the atton you took from us." They never take the atton anymore, however. This custom existed under the Kokandians and khans. In this way, as was explained above, the thief was often released without bringing him to a court examination (Torgai).

685 695

/169/ A candid confession does not lighten the punishment. On the contrary, when the bii sees the offender acknowledging the fact of his commission of the crime without shame, he may considere him a hardened ruffian or a professional thief and impose a higher fine because of this, or punishment by whipping. (Mikebai, Perovsk uyezd).

The plaintiff for his part, seeing that the defendant confesses from honesty and straightforwardness (er iken, muynyna, alyb otur, chinin aytty) can resign from the whole suit or part of it (Perovsk uyezd).

When there is a voluntary confession (azamat iken, uzi kelib aytty), with or without a court summons, the punishment can be reduced, and in view of repentence, completely forgiven, but only with the consent of the plaintiff (Auliye-Ata uyezd).

If a defendant denies the fact of his confession at a previous interrogation by a village elder, confirmed by a written act, the biis consider it possible to require a purificatory oath, as with a simple disavowal.

685

Stealing with house-breaking or without house-breaking, from a trunk and from an open place are punished alike (Torgai). (1) There

1. According to Makovetskii, Pt. I, p. 81, the easier a theft is, the more shameful it is considered. On this basis

628

salavat", i. e., complaints were mutual and therefore were considered satisfied, and if complaints remained unsatisfied, these were forgiven. They cut an aladzhipa[1] /cf. Chapter X/ for the consecration of the ending of old accounts, without appeal, and of full pacification, and now they give vouchers.

A partial salavat is forgiveness before a certain time (mundzhal). Disputes which went on before that time are forgiven (beregini suraymyz arigini suraymaymyz).

694

The presentation of a suit, several years (3 years, for example) after an event took place, complicates the examination. Therefore such a suit is settled by a testimonial oath. But if there are no witnesses the suit is not accepted for examination at all (kaldyrady) (the Perovsk and Auliye-Ata uyezds).

In the Kazalinsk uyezd suits are subjected to examination before the death of the defendants and likewise before the death of the plaintiffs. If heirs remain who know of the claim they can revive the affair. An affair which has been ended by salavat[2] cannot be reopened. But if the side which suffered presents a suit through a court after a salavat, the judge must convince himself of the salavat by witnesses. The confirmation of the salavat means a fine of atton for the person bringing suit, which goes to the judge, and the person who brings such a suit lacks the confidence of his kinsmen.

Limitation is recognized only in small crimes which remain undisclosed for not less than five years. But for murders and marital matters there is no limitaion. A groom, who has been absent without sending word, has the right on his return to demand the bride or the return of the kalym. If the former bride has married, a sister or niece is substituted for her. According to Torgai, suits concerning a bride and kalym are accepted for /173/ examination to the third generation, i. e., to the grandchildren. When there is a denial, they swear an oath, as is normal. Other suits are accepted only up to 5 or 6 years. Suits founded on vouchers are accepted up to 10 years, if the defendant could not be found earlier. After 10 years even wergeld is subject to salavat, i. e., limitation. Now a salavat is put down only after 5 or 6 years, with the condition that nothing was known of a murder in this time. Ten years are allowed, however, if something was known of it, but the murderer hid himself. If a thief was caught, released on bail and promised to give satisfaction, but fled, then a suit may be revived for up to 10 years.

1 [See cat. 116, p. 161--A.]

2 [Peace treaty between disputing clans; see cat. 116, pp. 153-154--A.]

•694 Everything which takes place gives way to the salavat in another dominion, for example, in the Kokand dominion, except a suit concerning a bride (yesir dau).

According to a report from the Chimkent uyezd, affairs concerning matchmaking do not have limitation, but all other matters have a ten year limitation, excepting only matters of wergeld (1)

1. The biis at the meeting of the Chimkent and Turkestan uyezds in September 1887 established that "matters are not accepted for attention after a limitation of 10 years, with the exception of affairs concerning brides and wergeld."

• • • •

which are examined even after ten years have elapsed since the day of the murder, when the court is presented with only factual proof, but without an oath.

431 Syuyunchi means a gift for news concerning relatives. Syuyunchi may be 1) voluntary, for example, for receiving the news of the birth of a son, daughter (for a daughter they give less), etc., and 2) more or less necessary at the news of the loss of property, finding it, the capture or detection of the thief, etc. A suit for not receiving syuyunchi is accepted by the bii for examination.

The extent of the syuyunchi depends on the services rendered to the person found, and on the value of the property itself. For bringing back a stolen animal about one-twentieth of its value is given, and for confiscating it from the thief by force, one-fifth. For bringing back the thief himself at the same time, the syuyunchi goes up to half the value of the object stolen.

/174/ The syuyunchi paid for finding a camel is 24 rubles or 6 tillias (according to Torgai and Abdurakhman), or 3 tillias for finding a horse, or 2 tillias for finding a cow.

The syuyunchi is called kulaksyuyunchi, if the person who brings the news has only heard that the lost object is found but did not see it himself. Kulaksyuyunchi is not large, being 2 rubles for a camel, 1 ruble for a horse, 1 ruble for a cow, 20 kopeks for a sheep and 10 kopeks for a goat.

The thief who is sentenced to pay a fine, pays also for syuyunchi among the other requirements.

695

or the clan chief wait patiently for a large gathering or a memorial service, to which they go, usually taking with them an elder from their village or of their clan, and this elder must defend their complaint before the gathering, and a reexamination which is considered final depends on this gathering. Torgai notes concerning this custom: Biis and elders are both at memorial services, and therefore both dissatisfied sides go there. A bii himself sends them there for pacification, but the host of the feast or memorial service forbids the settlement of court cases lest the celebration be spoiled (buzul masyn).

694

A bii does not enter into the examination of a civil case unless he is turned to.

/182/ In former times a bii who knew of a crime concerning which no complaint had been presented could make an investigation of it on an equal footing with aksakals and respected persons (yakhsy ksiler), for the satisfaction of the sufferer.

692

A bii can refuse to examine a case, especially for bad people. On the other hand, persons dependant on the bii, now excluding those serving him as well, can also refuse to be examined by him (Auliye-Ata uyezd).

If a trial takes place under a bii from the volost of the defendant, and both sides are dissatisfied by his decision, they can turn to an outside person (khalis ksi) or to a bii from another uyezd, but on doing so they must compose a written document (saldym kagaz) concerning the choice of the bii, as a result of which the trial becomes one of arbitration, and final. Otherwise they can turn to a volost official, who either refuses or consents to designate a new examination, but this time not from a single bii but from three or four.

If the plaintiff and the defendant are of different volosts, in the Kurama uyezd it is the custom to choose any bii of a third volost as arbitrating bii.

A court of arbitration (triteski sot), from which it is impossible to appeal, is considered in the present official Kazakh language to be an examination by biis, which is preceded by a document from the sides concerning the choice of the bii or biis, and consent to the decision which they will decree.

If both sides were from one volost it is difficult to appeal. It is easier if they are from different volosts, because the biis are suspected of partiality toward those in their jurisdiction.

For an extraordinary session /Russ. chrezvychainyi s"ezd/

687 days confinement by the police.

witnesses, (2) that the bii has accepted a bribe, in most cases this

2. There are cases where both sides present many (70-90) witnesses, ready to testify under oath that the bii has taken or has not taken a bribe.

circumstance is passed over to a court magistrate for the further prosecution of the case of criminal breach of trust.'

In the steppe in such cases they complain to the volost official, who charges the bii to "soothe the heart" of the complainer (keunin tultirib bering), i. e., either to clear himself by oath, or to give some sort of satisfaction to the dissatisfied person.

If there are no witnesses the bii usually clears himself by oath.

694 /187/ The summons of the litigants and the other interrogated persons to appear in court is in general the duty of the volost official. 661 He has riders /dzhigity/ for the summoning of the litigants. The plaintiff gives the rider who is sent for the defendant a certain sum, called "kyzmet" (good turn) which depends on the distance of the village of the defendant. If he wins the suit, he receives this money included with the other court expenses from the defendant.

The defendant asks the rider to tell the volost official that he was not at home. The rider refuses, demanding that the person under summons depart at once. Then the rider receives a bribe and reports to the volost official that the defendant was not at home. The volost official releases the plaintiff who is waiting there, for several days, adding after him: "Do not come empty, a!" (kuru kel'mengiz a!); meanwhile before the others the volost official says nothing, only rubbing his beard as though oiling it - a sign which is understandable enough to the plaintiff. After the departure of the plaintiff, the volost official asks the rider in a low voice whether he had found the defendant at home. The rider says: "He was. He gave me so and so much and promised also not to offend the volost official (kuru koymaymen)." In the evening of the same day the volost official sends another rider who frightens the defendant for not appearing. The defendant gives him something, in order to weary the plaintiff by delays.

Sometimes the volost official gives the plaintiff to understand, via an outside person, that the defendant was not at home 3 or 4 times, but nevertheless he, the volost official, will force the

694
661

defendant to be found, even if he has concealed himself under the ground (yerge kerib kitse de taptyramyn). But he needs remuneration for this. The plaintiff gives him something. Then the volost sends someone to tell the defendant on the sly that he should come but not to be afraid. After this the case is transferred to the bii.

694

After the litigants have presented a documnet with the choice of several biis, the volost official designates the place and time for their court appearance, warning the plaintiff that if he does not appear his suit will be refused, and the defendant that he will be considered convicted for non-appearance. But in spite of this, when the defendant does not appear, the case is not decided in his absence, but they send once again to his place of abode, and only if he /188/ flees from there can the volost official command that the judgment be made in his absence. Sometimes the defendant submits a complaint after all this for the biis' judgment by default. Then the biis are required to swear that he was summoned twice (Torgai).

694
683

In the opinion of Torgai, article 35 in Samokvasov: "If someone is sent after a person, and the envoy is beaten and receives wounds on the face, then the latter must make the same marks on the former in return" etc., is probably founded on the orders of some individual powerful volost official. Although on the other hand the Kazakhs have a proverb: A stick is rewarded by a stick (tayakka tayak kaytady), i.e., an eye for an eye and a tooth for a tooth.

If a rider was sent by a volost official but not on the basis of an order from the uyezd chief, then there is no prosecution for signs (tamga) on his face from blows. At any rate, when there are no witnesses, and the "tamga" /brand/ is only on the rider and not on the owner of the tent, then it depends on the state in which the rider emerged. /v tom, budto prikhodil dzhigit/. The affair ends with the words: "Come out and make peace" (dalaga chygyngiz yarasyngiz), for no oath is imposed for this. (1)

1. It may happen that the rider collects people for some sort of general suit and encounters resistance in this and receives blows with signs on his face or on his body. Then the people, who want to get around the rider, give him something, but not by customary law but voluntarily, for example a horse and a coat. They ask him not to lodge a complaint, saying: "Even if your head is cut, it is under your cap, even though your arm is broken it is in a sleeve" (bas yarylsa burk ichinde, kol synsa

694 dzhing iqhinde). As an excuse they use the saying: "quarreling and scuffling is a path which has existed since ancient times" (uruspak talaspak burunnan kalgan yul). 683

Since signs on the face are visible, they set value on the face, and they say to the offender: "you put a brand on my moon-like face" (ayday betime tamga saldyng), i. e., you mutilated my clear face. A wound on the arm for example is not important, unless a bone is broken (Turgai).

694 A rider can beat the person being summoned, in order to force him to go faster. A wound inflicted during this is not prosecuted.

When the volost official delays the summoning of the litigants and the witnesses, and the biis delay the examination of a case, the defendant hastens to declare a suit completely like the suit of the plaintiff (karsy dau, karsyma karsy dau). This is also done at the time of the examination of the case, sometimes /Inserted page. Picture. Caption: A session of the people's court: the plaintiff, bii Akhmet Turgaev, bii Chekaman Iskenev, bii Chokai Turgaev, the defendant. Drawing by Akhmatov. /#189/ also by the witnesses. But the biis avert such a suit. Exceptions to this are suits concerning animals recognized at a bazaar.

695 Mutual suits between quarreling kinsmen remain without consequence because of their extreme complication, or are led to pacification "in view of kinship." When it is impossible either to avert or pacify, then an oath is required from each litigant on his suit (Perovsk uyezd).

According to bii Sultan Kanaev, in mutual suits without witnesses two propitiatory oaths are given: one to the plaintiff himself, and the other to the defendant himself (bas basyna - on the head of each of them), the first on the suit which was declared earliest, the second on the cross bill. A biilyk is taken for each of these suits, but only when the suit is made good. Otherwise the biis limit themselves to collecting for the affixing of their seals (mukhrane).

If a part of a suit is shown to be just, it still does not follow from this that the entire suit is just. The part of the suit which is subject to suspicion must be approached as though it were a special suit.

The combination of crimes is not taken into consideration. Every crime is judged separately.

If a suit touches upon two objects which are usually not found in one place, the suit is divided (biis' books of the Perovsk uyezd).

[Not reproduced--A]

692
695

of the mediators are also recorded in the same book, which are signed and confirmed by both the seals of the mediators and of the litigants.

The people's courts of the nomadic population proceed to examine cases upon the complaints of private persons or upon a cummunication from the volost administrator or the uyezd chief. When the litigants disagree on the choice of a judge, the case is decided by a judge indicated by the plaintiff, but meanwhile the defendant is allowed to challenge two judges. [694]

The decisions of judges, involving sentences of no more than 30 rubles, and no more than seven days of arrest, are recognized as final and are not liable to appeal.

The decisions of the judge are announced to both sides, with the issuance of copies of the decision in case of demand, authenticated by the affixing of the official seals of the judges.

The people's courts may hear testimony concerning every sort of deed and agreement among the natives subject to their court, with the exception of settlements concerning immovable property, when the right of property in them is confirmed by deeds made out under the force of the general laws of the empire.

/206/ Deeds issued by the people's courts must be signed by the sides in their own hands, or for illiterates, by no less than two trusted persons and witnesses. They confirm the signature and the official seal of the people's court authenticating it, and they are recorded to the letter in the corded /shnurovia/ book, under the appropriate number in the sequence.

Sessions of judges are called together in every volost, and are made up of all the judges, although a session is considered legally constituted when no less than three judges are participating. The sessions are called together when needed, at times determined in advance by the uyezd chief. The sessions take place in the presence of the volost administrator, whose duty it is to pay special attention to decorum in the place of meeting of the session. 692

The people's judges appearing at the session elect a chairman from among them, who directs the order of examination of the cases.

Cases of complaints concerning inconclusive decisions of single
ges are subject to the jurisdiction of the sessions of the people's
ges. The judgments of the sessions count as final, with the ex-
tion of judgments decreed in excess of their authority or in cases
subject to their authority.

It is considered the duty of the sessions of the people's judges